

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of

Amendment of Part 90 of the
 Commission's Rules to Adopt
 Regulations for Automatic
 Vehicle Monitoring Systems

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

PR Docket No. 93-61

**COMMENTS OF THE CONSUMER ELECTRONICS GROUP
 OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby responds to the Notice of Proposed Rulemaking ("Notice") concerning the establishment of Part 90 rules for the Location and Monitoring Service ("LMS").¹ EIA/CEG has substantial reservations about the Commission's proposal, which appears to jeopardize the innovation and consumer benefits resulting from recent amendments to Part 15. Unless these concerns are satisfactorily addressed, EIA/CEG strongly urges that the Part 90 rules not be amended as proposed.

I. INTRODUCTION OF EIA/CEG AND STATEMENT OF INTEREST

EIA/CEG represents the consumer electronics industry, an industry that provides the American public with televisions, radios, videocassette recorders and camcorders, compact disc players, and a wide variety of other products. Our membership includes most major consumer electronics manufacturers, as well as many smaller companies that design, produce, import, distribute, sell, and service electronics products in the United States.

~~On behalf of our members, we participate in numerous FCC proceedings.~~

We also participate in the legislative process, organize trade shows, disseminate information to consumers, and establish industry standards (under the auspices of the American National Standards Institute). In all these endeavors, our mission is to promote competition, innovation, and interoperability of consumer products, thereby bringing quality, choice, and value to the consumer.

EIA/CEG has an intense interest in this proceeding. The proposed change in Part 90 rules may have a dramatic effect on the operation of Part 15 devices in the 902-928 MHz frequency band. EIA/CEG was an active participant in the proceeding in which the Commission encouraged the development of Part 15 devices in this band, and -- in reliance upon the Commission's prior actions -- EIA/CEG's members have developed and are marketing to the public substantial quantities of desirable products that operate successfully within the present framework of the rules. As a result, EIA/CEG must strongly oppose any change in the rules that adversely affects the public interest by limiting the ability of manufacturers to develop and to sell such devices, or by limiting the ability of the American public to use such products.

II. DISCUSSION

A. The Present Rules Governing Use of 902-928 MHz

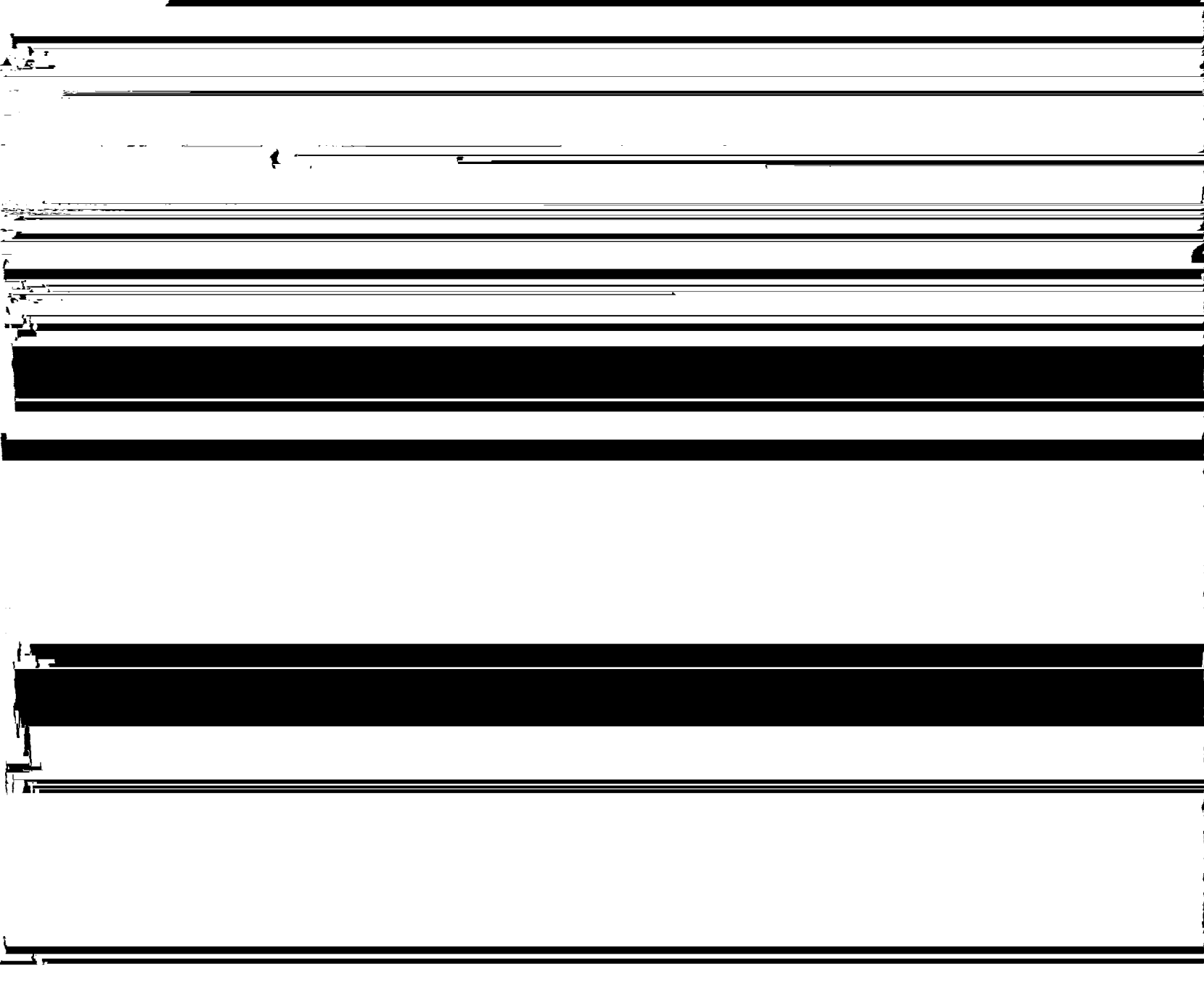
The Commission's rules currently authorize several different uses of the 902-928 MHz band. The primary assignment of the band is for Federal Government Radiolocation, Fixed and Mobile Services.² The same frequency band is also authorized for use by Industrial, Scientific, and Medical ("ISM") equipment.³ On a secondary basis, portions of the

^{2/} 47 C.F.R. § 2.106 (1992).

^{3/} 47 C.F.R. §§ 2.106, 18.301 (1992). Part 18 devices operating in this band are allowed "unlimited radiated energy." 47 C.F.R. 305(a) (1992). Part 18 devices include ultrasonic humidifiers, microwave ovens, and industrial heating equipment, to name but a few examples. See 47 C.F.R. §§ 2.106 footnote US 215, 18.107(d) & (g) (1992).

902-928 MHz band have also been authorized for use for Automatic Vehicle Monitoring ("AVM") systems.⁴ Amateur radio may also use the same frequencies.⁵

In addition, the Commission has affirmatively encouraged the development and use of Part 15 devices in the 902-928 MHz frequency band. Just four years ago, the Commission decided to "authorize the operation of Part 15 devices on a number of new frequency bands, namely the frequency bands allocated to [ISM] devices," specifically including 902-928 MHz.⁶ At that time, the Commission concluded that "there are many possible applications for Part 15 devices within these ISM bands" and that "manufacturers, if



innovative devices that are bringing considerable value to the American public. The present rules, which were carefully crafted by the Commission just a few short years ago and which are already beginning to produce substantial benefits, should not now be changed absent compelling justification.

B. Part 15 Equipment Manufacturers' Response
to the Opportunities Created By the Commission

Manufacturers have spent massive amounts of money -- as well as substantial personnel resources -- to develop products that make use of the opportunity the Commission created several years ago by opening the 902-928 MHz band for Part 15 products. Already, several new kinds of products have reached the marketplace and have received an enthusiastic welcome from the American public.

Better cordless phones, for example, which respond to the public's desire for better security and longer operating distances, are just becoming available. Wireless video products now permit a single VCR to serve multiple televisions in a single household, wireless audio products facilitate connection of speakers throughout the home, and wireless headphones now permit personal, but untethered, enjoyment of audio sources. Infrared-radio frequency converter-repeaters allow consumers to control electronics products, such as video and audio players, from other rooms. Intercoms, wireless microphones, and baby monitors have all been improved (with better range and security) as a result of the opportunity to use higher frequencies and, with spread spectrum, higher power as well. Home and car security products also take advantage of the opportunities created by the rules for Part 15 operation at 902-928 MHz.⁹

EIA/CEG's focus is primarily on consumer products, but the range of Part 15 offerings for the business environment has likewise burgeoned. Wireless bar code readers, antishoplifting devices, wireless local area networks, and remote meter reading devices are

^{9/} Many of these products help to promote the safety of life and property. These uses are entitled to special consideration in spectrum allocation decisions. Protests to Commission Order No. 19; Frequency Allocations to Services in the Frequency Bands from 30,000 to 300,000 KC, 39 FCC 1, 14 (1939).

among the many new products that have been and are being developed for 902-928 MHz operation.

EIA/CEG firmly believes that the products available to date represent a small fraction of the innovative devices that will soon be available for use in the 902-928 MHz band, assuming that the rules are not precipitously changed. Manufacturers are naturally reluctant to give their competitors advance knowledge of their product plans, but design and development work is apparently far along for many new products that use these frequencies.

These products can make Americans more efficient at work and enhance the quality of life at home as well. The asserted virtues of a new service are not reason enough to permit investments in these products to be destroyed.

C. The Proposed Changes in Existing Rules for 902-928 MHz

The Commission now proposes to change the Part 90 rules in a manner which could substantially alter the current environment for operation in the 902-928 MHz band. The proposals in the Notice would transform the authorization for AVM services by making several major changes in the existing rules.

First, the range of potential customers would be expanded. Today, AVM can serve businesses and local governments, but, under the Notice, individuals and the federal government could also be end users.¹⁰ Second, the number and range of potential providers would be expanded. Today, AVM service generally must be provided only on a cost-sharing basis, but the proposals in the Notice would allow private carriers to provide AVM services on a for-profit basis.¹¹ Third, the scope of potential services would be broadened. Today, AVM systems are limited to transmitting information regarding vehicles, but the Notice would allow AVM to be used to transmit information regarding the location of any object, animate or inanimate, as well as to "transmit and receive status and instructional messages related to the

^{10/} Notice at ¶ 7.

^{11/} Id. at ¶ 8. The Commission recognizes that "expansion of permissible use and eligibility may . . . have its drawbacks," such as by causing "rapid congestion of available spectrum." Id.

units involved."¹² Fourth, the Notice would replace interim spectrum rules with permanent rules and allow private radio operations throughout the 902-928 MHz band.¹³

In sum, these changes would vastly expand Part 90 operations in the 902-928 MHz band, allowing new providers, new customers, and a variety of new services. To reflect the changed nature of the service, the Commission proposes to rename AVM as the Location and Monitoring Service, or LMS. It is inevitable that these changes would cause considerably greater deployment of Part 90 devices operating in this band, thereby increasing the likelihood of interference caused to and received from other operations in the band.

D. The Need To Protect Existing Uses

The Notice recognizes that the multiplicity of uses of the 902-928 MHz bands creates the potential for interference.¹⁴ It specifically mentions that interference from Part 15 devices is "likely [to] be a continual concern as new consumer-oriented Part 15 devices, including the new spread spectrum cordless telephones, which can operate with up to one watt, are introduced."¹⁵ The Notice asks whether it is "possible to establish reliable LMS systems considering the number and diversity of other users of this band."¹⁶

As originally released, the Notice followed the last inquiry with the question whether Part 15 and amateur operations should be removed from the band to make way for LMS systems.¹⁷ A later erratum rephrased the question to seek suggestions to limit interference, "short of" removing Part 15 and amateur operations from the band.¹⁸

^{12/} Id. at ¶ 9.

^{13/} See id. at ¶ 4. AVM operations are currently limited to narrowband systems at 903-904 and 926-927 MHz and broadband systems at 904-912 and 918-926 MHz. Id. at ¶ 10.

^{14/} Notice at ¶¶ 23-24.

^{15/} Notice at ¶ 24 (footnote omitted).

^{16/} Id.

^{17/} Id.

^{18/} Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, DA 93-516 (released May 5, 1993).

EIA/CEG welcomes the significant change in thrust reflected by the erratum, but we remain concerned that the Notice portends injury to Part 15 manufacturers, vendors, and users. Although we are well aware that Part 15 devices operating under the existing rules have a duty not to cause harmful interference to authorized radio services and must accept whatever interference is caused by such services,¹⁹ we also believe that the Commission is duty-bound to take a broad view of the public interest in making decisions concerning possible changes in existing spectrum rules.²⁰ Like other federal agencies, the Commission cannot radically alter one course in favor of another without adequate justification.²¹

Scores of manufacturers, thousands of retailers, and millions of consumers have made investments in Part 15 technologies and products in reliance on existing rules. Accordingly, the burden of proof must be placed on the proponents of the expanded Part 90 use to show that they can coexist peacefully with Part 15 devices and other services -- including government, ISM, and amateur radio -- operating in the 902-928 MHz band. To date, however, LMS proponents have provided no serious analysis of the consequences that expanded Part 90 uses would entail for other devices, especially Part 15 devices, operating in the band. This is truly unfortunate.

E. A Proposed Course of Action

The proponents of LMS appear to have neglected to consider Part 15 devices in the earlier phases of this proceeding. We hope that the foregoing comments -- and those of other parties interested in protecting opportunities for Part 15 innovation -- will help to dissuade the Commission from following a precipitous course in this proceeding. Surely there

^{19/} 47 C.F.R. § 15.5(b) (1992)

^{20/} See generally WOKO, Inc. v. FCC, 153 F.2d 623, 628 (D.C. Cir. 1946)(touchstone for FCC action must be "public interest, convenience, and necessity"), rev'd on other grounds, 329 U.S. 223 (1946); Tandem Productions, Inc. v. Columbia Broadcast System, 609 F.2d 355, 362 (9th Cir. 1979)(interests of public are paramount); National Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 636 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976).

^{21/} See Motor Vehicle Manufacturers Ass'n v. State Farm, 463 U.S. 29, 42 (1983); Great Boston Television Corp. v. FCC, 444 F.2d 841, 852 (1970).

needs to be a careful analysis of the many services and products that already operate in this band and of the effects that could result from the proposed expansion of Part 90 operations in these frequencies.

A variety of mechanisms are available to ensure that interference concerns are fully explored. A Further Notice of Proposed Rulemaking might be considered. It may be that the Commission's Laboratories, within the Office of Engineering and Technology, could help to conduct necessary interference testing, or to evaluate interference tests provided by LMS proponents. Alternatively, the Commission may wish to consider organizing an inter-industry dialogue of one form or another.²² In no event should the Commission proceed with adoption of new rules before these interference issues are fully investigated.

^{22/} EIA/CEG is not advocating the establishment of an advisory committee or the use of negotiated rulemaking procedures at this time. Rather, we merely suggest that the Commission may wish to convene a meeting of all interested parties to promote mutual awareness and understanding and to explore alternative approaches to the resolution of potentially difficult technical issues.

III. CONCLUSION

For the reasons given above, EIA/CEG believes the Commission should not adopt the proposals set forth in the Notice unless issues of interference have been fully explored and resolved. If technical analysis confirms that the proposed LMS operations would adversely affect existing Part 15 products or constrain future Part 15 innovation and operation in the 902-928 MHz band, or would adversely affect Government, ISM, or amateur radio operations in the band, then the proposal in the Notice should be withdrawn.

Respectfully Submitted,

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